

UNITED STATES COURT OF APPEALS

FOR THE FIRST CIRCUIT

No. 71-1331.

UNITED STATES OF AMERICA,

V.

JOHN DOE,

MIKE GRAVEL, UNITED STATES SENATOR,
Intervenor, Appellant.

No. 71-1332.

SAME,

V.

SAME,

SAME.

PETITION OF INTERVENOR-APPELLANT FOR CLARIFICATION

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PETITION FOR CLARIFICATION

Senator Mike Gravel, intervenor-appellant, respectfully requests this Court to clarify the scope of permissible questioning of witnesses before the grand jury relative to the activities of Senator Gravel and his aides. This petition for clarification is filed because the modified Protective Order issued in the Judgment does not appear, in certain respects, to conform with holdings in the opinion.

Paragraph 1 of the modified Protective Order reads as follows:

"No witness before the grand jury currently investigating the release of the Pentagon Papers may be questioned about Senator Mike Gravel's conduct at a meeting of the Subcommittee on Public Buildings and Grounds on June 29, 1971, nor, if the questions are directed to the motives or purposes behind the Senator's conduct at that meeting, about any communications with him or with his aides regarding the activities of the Senator or his aides during the period of their employment, in preparation for and related to said meeting."

In our petition for rehearing, we discussed what appears to be an apparent inconsistency between the scope of questioning permitted with respect to conduct at the hearing (clause 1) and preparation for it (clause 2).

We also desire clarification with respect to the second clause, which permits inquiry into preparation "if the questions are [not] directed to the motives or purposes behind the Senator's conduct at the hearing." In the opinion (p. 12) the Court construed United States v. Johnson, 383 U.S. 169 (1966),

to prohibit inquiry into preparation "if the object is to a the legislator's motives in speaking." (emphasis added) We request the Court to clarify whether the grand jury is prohibited from inquiry of third parties about (1) the Senator's motive for holding the hearing, or about (2) such motives if the purpose of the inquiry is to attack them, or about (3) preparation for the hearing if that relates to his motives for holding it.

Paragraph 2 of the Protective Order provides:

"Dr. Leonard S. Rodberg may not be questioned about his own actions while being interviewed for, or after having been engaged as a member of Senator Gravel's personal staff to the extent that they were in the course of his employment."

Since the Court in the opinion stressed the necessity of preserving the confidential relationship between the Senator and his aides, we think that, in order to bring this provision into conformity, it should bar questioning of what aides observed and heard, as well as did, in the course of their employment. Otherwise, a literal reading of Paragraph 2 would permit questioning of an aide about the Senator's actions or about communications from others with whom they were directly by the Senator, to deal.

Finally, the Court mandated in the opinion (p. 13) that the District Court prohibit questioning of aides "relating to the Pentagon Papers or to intervenor's legislative activities."

during the period of their employment." This appears to be substantially different than Paragraph 2 above.

Respectfully submitted,

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